

EXAMINER'S AMENDMENT/COMMENTS

Status of the claims

1. Claims 1-4, 8 and 13-56 are pending. Claims 3-4 and 34-55 are withdrawn as being drawn to non-elected inventions. Acknowledgement is made of amendment to claims 1, 13, 15, 27-29, 31 and 33.

Claim Rejections - 35 USC § 112

2. Rejection of claims 1-2, 8, 13-33 and 56 under 35 U.S.C. 112, second paragraph, as being indefinite because of the use of the phrase "undesirable constituents" in claim 1 is **withdrawn** in view of amendment to claims 1, 13 and 31.

Claim Rejections - 35 USC § 103

3. Rejection of claims 1, 2, 8, 13-33 and 56 under 35 U.S.C. 103(a) as being unpatentable over Berenson, et al in view of Kemshead and Ugelstad and Rudi, et al. is **withdrawn** in view of Applicants'.

Election/Restrictions

4. Claims 1-2, 13-33 and 56-60 are allowable. The restriction requirement amongst Groups I-IV, as set forth in the Office action mailed on 3/19/2007, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claim 3, 4 and 34-41, directed to a non-elected species of Group I (a process for isolating a target cell, cellular organelle or virus) is no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However,

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claims 42-43 and 55, directed to a kit for isolating a target cell, cellular organelle or virus, and claims 44-54, directed to a process for isolating a target cell, cellular organelle or virus, are withdrawn from consideration because they do not all require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

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5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Yan Leychkis on 3/23/2010.

The application has been amended as follows: Claims 8 and 42-55 are **cancelled**. The following claims are **added**:

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57. The process of claim 1, wherein the magnetic microbead comprises a magnetizable substance selected from the group consisting of a paramagnetic substance, a ferromagnetic substance and a ferrimagnetic substance.
58. The process of claim 57, wherein the magnetizable substance comprises a metal composition.
59. The process of claim 58, wherein the metal composition is a transition metal composition or an alloy thereof.
60. The process of claim 7, wherein the transition metal is selected from the group consisting of iron, nickel, copper, cobalt, manganese, tantalum, zirconium and cobalt-tantalum-zirconium (CoTaZr) alloy.

Conclusion

6. Claims 1-4, 13-41 and 56-60 are allowed.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STUART W. SNYDER whose telephone number is (571)272-9945. The examiner can normally be reached on 9:00 AM-5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Nolan can be reached on (571) 272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Mary E Mosher/
Primary Examiner, Art Unit 1648

Stuart W Snyder
Examiner
Art Unit 1648

SWS